IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8848 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAUDHARY K GOBARBHAI

Versus

STATE OF GUJ

Appearance:

MR JITENDRA M PATEL for Petitioners

MR RV DESAI AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/9/2000

CAV JUDGEMENT

Learned advocate Shri Jitendra M. Patel is appearing for the petitioners. Learned AGP Shri R.V.Desai is appearing for the respondents. This petition was admitted by this court on 15th April, 1991

by issuing rule thereon and the interim relief was ordered to continue while admitting this petition. In this petition, the respondents have not filed any affidavit in reply against the averments made in the petition.

Brief facts of the present petition are that the land bearing survey No. 211 situated in the sim of village Satlasana in Kheralu Taluka admeasuring 4A.27 G. was owned by one Bai Amarba daughter of Kaluji Ramaji. One Nathaji Jesangji and Kaluji Mansangji were the tenants of the said land in the year 1957. That the proceedings under sec. 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 were initiated in the year 1961. The tenants of the land have shown their unwillingness to purchase the land. Therefore, an order under sec.32G dated 6.6.1961 was passed by the Mamlatdar and ALT Kheralu declaring the purchase of the land ineffective. Thereafter, since the purchase was made ineffective, the land was at the disposal of the collector under sec.32P of the Act and the Mamlatdar exercising the powers of the collector under section 32P of the Act , by order dated 24.12.1962 has terminated the tenancy of the tenants and given lands to the landlord for personal cultivation under section 32P (2)(b) of the said Act. From the date of the said order, the landlord was in possession of the land and the said order under sec.32P of the said Act was not challenged by the tenant and thus, both the orders under sec.32G and 32P became final and binding to the parties. Thereafter, necessary entry no. 787 was made in the revenue record on 16.5.1975 notifying the fact that the possession of the land was given to the landlord for personal cultivation under section 32P (2)(b) of the Act which entry was certified by the Mamlatdar. Thereafter, heirs of the original landlord made an application before the taluka development officer for converting 1 Acre 13 Gunthas of the land from s.n.211 for NA Purpose for making plots for the residential purpose. The taluka development officer under his order dated 15.4.1985 granted NA Permission in respect of the said land. Thereafter, original land owner Nandaba Kaluji Thakore sold all the 35 plots to 21 different persons including the petitioners by separate sale deeds in May and June, 1985.Petitioner No.1 purchased plot No. 1/1, 1/2 and 2 i.e. three plots by registered sale deed dated 5.6.1985 for Rs. 7,500/- from the owner Nandaba Kaluji Thakore and petitioner No.2 purchased plot NO.3 and 4 by registered sale deed dated 5.6.1985. The original owner sold 30 plots to other 19 persons by separate 19 sale deeds executed in or around the same time. Thereafter, the names of all these 21

purchasers were entered into the revenue record in the village form No. 7, 7A and 12. The Mamlatdar posted entry No.1462 dated 7.8.1985 notifying the aforesaid lands. In the said entry, the Mamlatdar has certified entries in favour of all the plot holders from sr.no.1 to 19 but has not certified entry of the petitioners whose name is shown in the said entry at sr. no. 20 and 21 on the ground that the original owner has raised objections before him. The petitioner submits that the original owner Nandaba Kaluji Thakore had given in writing on 17.7.1985 that she has not received full amount from the petitioners and, therefore, entry in favour of the petitioners should not be certified but she has no objection to certify the entries for the rest of the plots. The case was thereafter taken on the dispute register and the Mamlatdar, by his order dated 10.10.1986, cancelled the sale deed for five plots of the petitioners. Thereafter, the petitioners had preferred appeal no. 54 of 1986 before the Deputy Collector, Patan which was dismissed by order dated 11.5.1987. The Deputy collector has also dismissed all the objections of the original owner and has decided the question of tenancy inasmuch as he has held that the land was at the disposal of the collector under section 32P of the Act and, therefore, the landlord has no right to transfer the land. Thereafter, the petitioners had preferred revision application before the Collector, Mehsana against the order of the Dy. Collector dated 11.5.1987 which was dismissed by the COllector by order dated 26.12.1988. Thereafter, revision application was preferred before the State Government. The State Government, without deciding short controversy whether the Mamlatdar was justified in not certifying the entry in favour of the petitioners for five plots, held as if he was deciding the case under the Tenancy Act that under sec.32P, the land owner has no right to transfer the land and he has held that the land vested in the State Government under sec. 32P of the Act and has decided all the questions under sec.32P though the order under sec.32G and 32P were final and no party had challenged the said order. Thereafter, review application was filed by the petitioners before the State Government and in response thereto, the petitioners received letter from the State Government dated 21.11.1990 that if the petitioners are aggrieved by the said order, the petitioners can file an appeal before the competent court. Thereafter, the petitioners had also made an application to the Mamlatdar for getting certified copy of the order passed under section 32P of the Act dated 24.12.62 terminating tenancy of the tenants and granting the land to the owner for personal cultivation but the Mamlatdar has, by his reply dated

14.9.1990, informed that the record of 1962 regarding said entry No. 787 is not available and no copy can be given to the petitioners. Thereafter, the petitioners have approached this court by means of this petition challenging order of the Mamlatdar at Annexure "H", order of the Deputy Collector at Annexure "I", order of the Collector at Annexure "J", order of the State Government at Annexure "K" on the grounds raised in the memo of petition.

I have heard the learned advocate Shri J. M. Patel for the petitioners. I have also heard the learned AGP Mr. Desai appearing for the respondents.

Learned advocate Mr. Patel appearing for the petitioner has submitted that the order passed by the Mamlatdar is violative of Article 14 and it amounts to discrimination on the ground that there was common entry no. 1462 dated 7th August, 1985 made in the revenue record. Out of 21 transactions, the Mamlatdar has certified transactions in favour of 19 persons whereas so far as the petitioners are concerned, has refused to certify the entry which is one and common and therefore, it is violative of Article 14 of the Constitution of India. It is also submitted that the order under sec.32G of the Act was passed on 6.6.1961 between the tenants and the land lord and in the said order, the tenants have refused to purchase the land and therefore, the purchase was declared as ineffective and the land was placed at the disposal of the collector under sec.32P of the Act and thereafter inquiry was initiated under sec.32P of the Act for disposal of the land as per the priorities given under section 32P of the Act and the Mamlatdar while exercising the powers of the Collector, passed order under sec.32P of the Act terminating tenancy of the tenants and giving possession of the land to the original owners for personal cultivation and the same was open and permissible in view of the existing provisions in the year 1962. Said order under sec.32P was also reflected in the entry no. 787. He has also submitted that originally, at the relevant time, in section 32P, there were only five sub sections namely sub section (1) to sub section (5) in the year 1962 and by amendment by Gujarat Act 36 of 1965, sub section (6) to (11) were inserted in section 32P of the Act. Thereafter, by Gujarat Act 5 of 1973, clause (b) of section 32P(2)(b) was deleted. He has submitted that in view of the said deletion,now the landlords have lost their right to get the land for personal cultivation under sec.32P of the Act. In view of the aforesaid legal position, he has submitted that it is clearly established that in the preset case, the order

under section 32P was passed by the Mamlatdar acting as Collector on 24.12.1962 and by the said order, the tenancy of the original tenants was terminated and the land was ordered to be given to the land lord Amraba Kaluji and Gajraba Kaluji. Bai Nandaba became the owner of the land in the year 1983 when it was given to her by her mother Bai Gajraba in her life time. He has also submitted that at the relevant time, there was no restriction on them regarding transfer of the land. Said restriction came in force in the year 1965 by sub sec.(6) to (11). Therefore, he has submitted that the order passed by the Mamlatdar was legal and valid and was in consonance with the provisions of law in force at the relevant time. He has submitted that the said order cannot be decided by the revenue authorities in light of the provisions of the amendment in the Act.He has submitted that since there were no restrictions at the relevant time, the owner was justified in transferring the land to any person they wish and, therefore, the sale deed which were executed in favour of the petitioners as well as other 19 persons were quite legal, valid and came cannot be decided by considering the provisions of the amending Act by the revenue authorities. He has also submitted that the revenue authorities are not entitled to cancel the entry on the assumption that the transactions are against the provisions of a particular enactment. He has also submitted that the revenue authorities while certifying the entries have to proceed under the Bombay Land Revenue Code and not under any other enactments like Bombay Tenancy and Agricultural Lands Act or the Urban Land (Ceiling and Regulation)Act or such other Acts. According to him, the mutations have to follow either enactment of title or the orders passed by the competent authority under several enactments. According to him, the revenue authorities cannot cancel the entry under rule 108 by holding that the transaction was in breach of any particular enactment and, therefore, the orders in question are without jurisdiction and the authorities have exercised the jurisdiction not vested in them. According to him, the landlord has objected against certification of the entry on the ground that she has not received full amount of consideration. On such ground, the authorities were not justified to certify the entry on that ground. He has submitted that it was not the business of the authorities to see as to whether the land lord has received consideration or not. He has also submitted that under sec. 135C of the Bombay Land Revenue Code, it is provided that if the person has acquired any right, title or interest in the property by virtue of the registered instrument, he shall be exempted from the obligation of reporting to the village

accountant but the Mamlatdar is bound to make the entry from the information received from the office of the Registrar regarding registered document of transfer and the revenue authorities cannot act behind the registered documents and cannot refuse to certify the entry on any other ground. He has relied upon the decision in case of State of Gujarat versus Patel Raghav Natha and others, 10 GLR 942 and has pointed out that when the title of the occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious, the commissioner should refer the parties to the competent court and not to decide the question of title by himself against the occupant. He has also relied upon the decision of this court in case of Evergreen Apartment Coop. Housing Society Ltd. versus Secretary (Appeals) Revenue Department reported in 1991 (1) GLH 155 and has submitted that in the said decision, in Head Note (B), it has been held as under:

"Revenue Secretary acting under the Land Ceiling Act-Not permissible-Authority while exercising his powers under particular enactment cannot decide a question under another enactment, though itm ay happen that the same authority holds capacity to act under both the enactments."

He has also submitted that in the said decision, it is held by this court that it is quite possible that an officer of the revenue department may be occupying different capacity under different enactment. That however, would not empower him to exercise any powers under the enactment while proceeding under another enactment. So far as the proceedings under rule 108 of the Rules popularly known as RTS Proceedings are concerned, it is settled that the entries made in the revenue record have presumptive and fiscal value and they do not create any title. Such mutations have to follow either documents of title or orders passed by the competent authority under special enactment. Independently, revenue authorities as mentioned under rule 108 of the rules cannot pass orders of cancelling the entries on assumption that the transactions recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following procedure prescribed thereunder and by giving opportunity of hearing to the concerned parties likely to be affected by any orders that may be passed. On this second ground also, the orders of the collector and the Addl. Chief Secretary appears to be beyond their jurisdiction. In the said decision, case of State of Gujarat versus Patel Raghav

Natha,X GLR 942 has also been considered by the learned Single Judge. He has also relied upon the decision in case of Ahmed Abdul Rahim Shaikh and Others versus Assistant Collector and Others reported in 1993 (2) GCD 912. He has also relied upon the observations made by this court that sec.43 contemplates that no land or any interest therein purchased by a tenant under various sections mentioned therein or sold to any person under sec.32P or 64 shall be transferred or agreed by an instrument in writing to be transferred by sale, gift, exchange, mortgage, lease or assignment without the prior permission/sanction of the collector and except in consideration of the payment of such amount as the State Government may, by general or special order determine and no such land or any interest therein shall be partitioned without the previous sanction of the COllector. Thus, the provisions are with regard to the agricultural lands when the said land ceases to be the agricultural land and changes its nature, sec.43 cannot be said to be applicable to such land and the tribunal has no jurisdiction in the matter for the reason that the NA Permission was granted under the provisions of the Bombay Land Revenue COde. In the facts of the present case, when the land was no longer remaining agricultural land, the provisions of section 43 cannot be resorted to. Consequently, sec.84C of the Act also cannot be pressed into service in respect of the land which is no longer an agricultural land. He has cited one decision in case of J.S. Shah versus State of Gujarat reported in 1993 (2) GCD 377 wherein it has been held that once NA Permission is granted, the character of the agricultural land is changed and the provisions of sec.63 ceases to apply and power of revision to cancel NA Permission is required to be exercised within reasonable time of three months as indicated under sec. 65. He has submitted that in the present case, such power to cancel the entries has been exercised after unreasonable long period of more than fifteen years from 1961 to 1975 because these entries were based on the order under sec.32G and sec. 32P of the Act. These entries can be cancelled only if the orders under sec.32G or sec.32P are set aside by the competent authority under the Tenancy Act in appeal or revision as provided under the Act. In view of his aforesaid submissions, Mr. Patel has prayed that the orders passed by the revenue authorities should be set aside.

Learned AGP Mr. Desai has referred to page 64, para 9(2) and has submitted that the transaction itself is illegal and it amounts to loss of revenue to the Government. He has also submitted that the banakhat was

dated 27.12.1984 and at that time, NA Permission was not granted to the original owner of the land but it was granted on 15.4.1985. He has submitted that the revenue authorities have rightly considered various provisions of the Act and has rightly found that in the said transaction, various provisions of the Act have been violated by the petitioner as well as the original owner of the land and, therefore, the revenue authority has rightly set aside the sale deed. He has also submitted that the revenue authorities have not committed any error or illegality and has passed the orders within the jurisdiction vested into them and, therefore, the present petition is required to be dismissed with costs.

I have considered the submissions made by the learned advocates for the respective parties. I have also considered the averments made in the petition and the papers brought on the record of this petition. The order in question dated 10th October, 1986 has been passed by the Mamlatdar, Kheralu in case NO. 11 of 1986 under rule 108 of the Bombay Land Revenue Code.While exercising the powers under rule 108, whether the Mamlatdar has power to cancel the sale deed or not has been considered in the reported decision 1991 (1) GLH 155 (supra). In the said decision, it has been held by this court that the revenue authorities while exercising powers under rule 108 of the Rules cannot pass orders of cancelling entries on an assumption that the transaction recorded in the entry are against the provisions of particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following proper procedure prescribed therein and by giving opportunity of hearing to the parties who are likely to be adversely affected by any orders that may be passed. As observed earlier, originally, sec. 32P was having only five sub sections namely sub-sec.(1) to (5) and by amendment, Gujarat Act 36 of 1965, sub sec.(6) to (11) have been inserted in sec.32P and, therefore, considering the original provisions of the Act, orders passed by the authorities considering the provisions as amended would amount to without jurisdiction because in amendment, the owner of the land has lost powers to get their land for their personal cultivation under sec.32P of the Act but prior to the amendment, the land lord was having legal right to get the land for their personal cultivation and therefore, the order dated 6.6.1961 was rightly passed holding that the purchase has become ineffective under sec.32G because the tenant was not willing to purchase the and in question. Thereafter, necessary entries were made under sec.32P and the land has been given to the

original land owner for use and personal cultivation under the provisions of the Act and thereafter NA Permission was granted on 15.4.1985 and necessary plots were also sanctioned by the auhtorities and, therefore, transaction carried out in pursuance to the NA Permission are legal and valid and as such, the orders passed cancelling the transaction are, therefore, apparently and without jurisdiction because the order in question has been passed on 10.10.1986 under rule 108 of the Rules and the authority cannot pass such orders under rule 108 to cancel the transaction and to cancel the entries of sale deed made in the revenue record and, therefore, the revenue authorities has acted beyond the jurisdiction vested into them and, therefore, those orders are required to be quashed and set aside and this petition is required to be allowed.

Accordingly, the order dated 10.10.1986 passed by the Mamlatdar (ANnexure "H"), the order passed by the Deputy Collector dated 11.5.1987 (Annexure "I"), the order passed by the Collector dated 26th December, 1988 (Annexure "J"), the order dated 23.11.1989 passed by the State Government (Annexure "K") are required to be quashed and set aside by allowing this petition. They are accordingly quashed and set aside and it is directed to the respondent authorities to certify the entry No. 1462 in favour of the petitioner within one month from the date of receipt of certified copy of this judgment. The petition is, thus, allowed. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt. 13 .9.2000. (H.k. Rathod,J.)

Vyas